

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff, : Case No. 3:17-cr-059
Civil Case No. 3:23-cv-310

- vs -

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

MYRON D. BAKER,

Defendant. :

DECISION AND ORDER

This case under 28 U.S.C. § 2255 is before the Court on Defendant's Motion to Amend (ECF No. 237). The Motion is DENIED for the following reasons.

First of all, the Motion is untimely. Defendant's prior Motion to Amend (ECF No. 231) was denied without prejudice with the condition that any re-filing be done by September 18, 2024 (ECF No. 232, PageID 1534). The instant Motion to Amend was not filed until September 30, 2024 (See PageID 1546). To put the time frame in context, the case has been pending on a dispositive Report and Recommendations since June 17, 2024, and Defendant has not yet filed any objections.

Secondly, at least part of the Amended Motion would be subject to dismissal under Fed.R.Civ.P. 12(b)(6) as futile. Baker claims he is actually innocent of the death enhancement to

the charge to which he pleaded guilty. However, actual innocence is not a cognizable ground for habeas corpus relief. *Herrera v. Collins*, 506 U.S. 390 (1993).

Third, the amendments are barred by the statute of limitations. The Supreme Court denied certiorari in this case on October 11, 2022. *Baker v. United States*, Case No. 22-5154 (Oct. 11, 2022)(copy at ECF No. 181). Baker filed the pending Motion to Vacate on October 2, 2022, with only nine days left on the one-year statute of limitations. It is now almost two years later, well beyond the statute of limitations date.

October 4, 2024.

s/ *Michael R. Merz*
United States Magistrate Judge